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| APPLICATION NO.   | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO.  | CONFIRMATION NO. |
|---|-------------|----------------------|----------------------|------------------|
| 09/961,381  | 09/25/2001  | Gary Lynch           | 1819.0040001/MAC/LBB | 7154             |
| 26111   | 7590        | 06/27/2006           | EXAMINER             |                  |
| STERNE, KESSLER, GOLDSTEIN & FOX PLLC<br>1100 NEW YORK AVENUE, N.W.<br>WASHINGTON, DC 20005 |             |                      | DOWELL, PAUL THOMAS  |                  |
|   |             |                      | ART UNIT             | PAPER NUMBER     |
|   |             |                      | 1632                 |                  |
| DATE MAILED: 06/27/2006   |             |                      |                      |                  |

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action  
Before the Filing of an Appeal Brief**

Application No.

09/961,381

Applicant(s)

LYNCH ET AL.

Examiner

Paul Dowell

Art Unit

1632

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 14 June 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☒ The Notice of Appeal was filed on 14 June 2006. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☒ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: \_\_\_\_\_.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). \_\_\_\_\_.  
13. ☐ Other: \_\_\_\_\_.

  
ANNE-MARIE FALK, PH.D  
PRIMARY EXAMINER

Continuation of 3. NOTE: Applicants have amended claims 1 and 59 to recite "RGD peptide" as one of a group of integrin antagonists. While these specific amendments, if entered, would overcome the rejection of claims 15 and 17 under 35 U.S.C. 112, second paragraph (see page 2 of the 12/14/2005 Office Action) as argued by Applicants, said amendments would also broaden the scope of the claims, thereby necessitating further consideration and a new search of the claimed invention. Reasonably interpreted, the term "RGD peptide" encompasses any and all peptides comprising the amino acid sequence R-G-D, and does not only encompass, for example, RGDS peptide, GRGDS peptide, GRGDSP peptide and GRGDTP peptide.

Applicants have amended claims 1 and 59 to remove beta-amyloid as one of a group of integrin antagonists. The specification does not contemplate the claimed method of determining the effect of a substance on sequestration, uptake or accumulation of amyloid in brain cells without exposing said brain cells to beta-amyloid. These amendments, if entered, would raise a new matter issue. Further, these amendments, if entered, would require further consideration of whether the claimed invention is enabled (e.g. the amended claims would appear to be drawn to a method that is missing an essential element because amyloid uptake in cells cannot take place without exposing said cells to beta-amyloid).

Continuation of 11. does NOT place the application in condition for allowance because:

Applicant's amendments to claims 1 and 59 have not been entered and therefore all previous grounds of rejection are maintained.

Applicant's arguments filed 6/14/2006 have been fully considered but they are not persuasive. Applicants arguments that the proposed amendments to claims 1 and 59 are sufficient to overcome the rejections under 35 USC § 112, 2<sup>nd</sup> paragraph, 35 USC § 102(b) and 35 USC § 103(a) are moot because the proposed amendments have not been entered for the reasons noted above. Applicants provide no specific reasoning for the traversal of the rejections under 35 USC § 102(b) and 35 USC § 103(a).